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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,) No. CR-13-8177-2-PCT-NVW (BSB)
10 Plaintiff,) **ORDER OF DETENTION**
11 vs.)
12)
13 Denis Kirby,)
14 Defendant.)
15

16 In accordance with Title 18 U.S.C. § 3142 of the Bail Reform Act, a detention hearing
17 was held in the above-captioned matter. The Court finds that the Government has
18 established: (Check one or both, as applicable)

19 ☐ by clear and convincing evidence, Defendant is a danger to the community and shall be
20 detained pending trial.
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22 ☒ by a preponderance of the evidence, Defendant is a serious flight risk and shall be
23 detained pending trial.
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PART I -- FINDINGS OF FACT

25 ☐ (1) There is probable cause to believe that Defendant has committed the following:
26 ☐ an offense for which a maximum term of imprisonment of ten years or more is
27 prescribed in 21 U.S.C. §§ 801 *et seq.*, 951 *et seq.*, or 46 U.S.C. App. § 1901 *et seq.*
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☐ an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332(b).

☐ an offense listed in 18 U.S.C. § 2332b(g)(5)(B) (crimes of terrorism) for which a maximum term of imprisonment of ten years or more is prescribed.

☐ an offense involving a minor victim prescribed in _____.

☐ (2) Defendant has not rebutted the presumption established by finding (1) that no condition or combination of conditions will reasonably assure Defendant's appearance as required at future court proceedings and the safety of the community.

Alternative Findings

☒ (1) There is a serious risk that Defendant will flee and no condition or combination of conditions will reasonably assure Defendant's appearance as required at future court proceedings.

☐ (2) No condition or combination of conditions will reasonably assure the safety of the community or others if Defendant were released from detention.

☐ (3) There is a serious risk that the defendant will (obstruct or attempt to obstruct justice) (threaten, injure, or intimidate a prospective witness or juror).

☐ (4) _____

PART II -- WRITTEN STATEMENT OF REASONS FOR DETENTION
(Check one or both, as applicable)

☐ (1) The Court finds that credible testimony and information submitted at the hearing establish by clear and convincing evidence as to danger that:

1 ☒ (2) The Court finds by a preponderance of the evidence as to risk of flight that:

2 ☐ Defendant has no significant contacts in the District of Arizona;

3 ☐ Defendant has no resources in the United States from which he/she might
4 make a bond reasonably calculated to assure his/her future appearance;

5 ☒ Defendant has a prior criminal history;

6 ☒ Defendant has a record of failure(s) to appear in court as ordered;

7 ☐ Defendant attempted to evade law enforcement contact by fleeing from law
8 enforcement;

9 ☐ Defendant is facing a minimum mandatory of _____ incarceration and
10 a maximum of _____ if convicted;

11 ☐ Defendant does not dispute the information contained in the Pretrial Services Report,
12 and all supplements, if any, except:
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18 ☒ In addition:

19 1. Defendant, age 42, has a significant, long-term addiction to illicit drugs and admits he
20 began to use methamphetamine at age 35 and has used it daily for the past four years; 2.
21 Defendant does not have a stable residence and has resided "off and on" for the past four
22 years between California and Kingman, as he was incarcerated in California; 3. Defen-
23 dant claims he is self-employed as a framer, but his estranged brother believes Defendant
24 is unemployed, describes him as a "wacko" who "does not make an honest living"; 4. The
25 Government has a very strong case against Defendant with video and audio evidence and,
26 though Defendant enjoys the presumption of innocence, a conviction and prison sentence
27 are likely which provides a motivation to flee; 5. The Government has provided the Court
28

1 with the docket of a California case (20080077548) from Ventura County Superior Court
 2 in which Defendant failed to appear as ordered five different times (4/7/08, 5/1/08,
 3 7/17/08, and 10/2/08, and 4/15/11) and verifies his probation was revoked several times;
 4 6. Defendant's history of failing to appear when ordered to do so and daily use of meth-
 5 amphetamine for four years demonstrate Defendant is untrustworthy and unreliable to
 6 comply with release conditions.

7 The Court incorporates by reference the findings of the Pretrial Services report and
 8 all supplements, if any, which were reviewed by the Court at or before the time of the
 9 hearing in this matter.

10 **PART III -- DIRECTIONS REGARDING DETENTION**

11 **IT IS ORDERED** that Defendant is hereby committed to the custody of the
 12 Attorney General or his/her designated representative for confinement in a corrections
 13 facility separate, to the extent practicable, from persons awaiting or serving sentences or
 14 being held in custody pending appeal. 18 U.S.C. § 3142(i)(2). Defendant shall be afforded
 15 a reasonable opportunity for private consultation with defense counsel. 18 U.S.C. § 3142
 16 (i)(3). Upon order of a court of the United States or request of an attorney for the Govern-
 17 ment, the person in charge of the corrections facility shall deliver Defendant to the United
 18 States Marshal Service for the purpose of an appearance in connection with a court
 19 proceeding. 18 U.S.C. § 3142(i)(4).

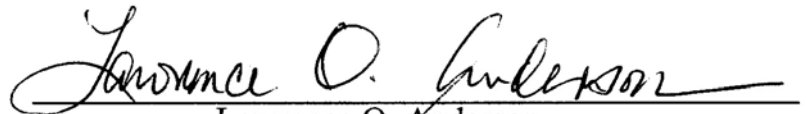
20 **PART IV -- APPEALS AND THIRD PARTY RELEASE**

21 **IT IS FURTHER ORDERED** that should a review of this detention order be
 22 filed pursuant to 18 U.S.C. § 3145, it is the responsibility of the movant's attorney to
 23 deliver a copy of the motion for review to U.S. Pretrial Services, at least, one day prior to
 24 the review hearing set before the assigned District Judge. Pursuant to Rule 59(a), Fed.R.
 25 Crim.P. (2010), a party seeking review shall have **fourteen (14) days** to file a motion for
 26 review after being served with a copy of this written order, after the oral order is stated on
 27 the record, or at some other time the assigned District Judge may set. Failure to timely file
 28 a motion for review in accordance with Rule 59(a) may waive the right to review. Rule

1 59(a), Fed.R.Crim.P.

2 **IT IS FURTHER ORDERED** that the issue of detention may be reopened at any
3 time before trial upon a finding that information exists that was not known to the movant
4 at the time of the detention hearing and such information has a material bearing on the
5 issue whether there are conditions of release that will reasonably assure the appearance of
6 Defendant as required and the safety of any other person and the community. Title 18
7 U.S.C. § 3142(f).

8 DATED this 9th day of September, 2013.

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11 Lawrence O. Anderson
12 United States Magistrate Judge
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